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The Fact-Finding Board In Labor Disputes

A radio discussion over WGN and the Mutual Broadcasting System

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The Fact-Finding Board

In Labor Disputes

MR. BORIN: Someone has said, "The only sure things in this world are taxes, death, and labor disputes." Today there is the Chrysler strike. Tomorrow we may see a rail strike, a shipping strike, or even another coal strike. With this continuing friction between management and labor there have been feverish attempts made to prevent serious work stoppages in the nation's industries. One procedure that has been developed and used with increasing frequency is the fact-finding board. This tool was twice tested under fire within the past year in nation-wide strikes in coal and steel.

Steel Fact-Finding Board

Daugherty, you served on the fact-finding board appointed by President Truman during the steel crisis. Can you give us the inside story on how a fact-finding board operates?

MR. DAUGHERTY: Well, a steel fact-finding board was set up by the President of the United States about the middle of July, following a threatened steel strike. This board was asked by the President to inquire into the merits of the issues in dispute and to make fair and equitable recommendations.

The board heard each side in the dispute for about nine days. Thereafter it wrote a report which it presented to the President on September 10. The issues in dispute were wage rate increase, medical and hospitalization benefits, and retirement benefits. The report recommended that the wage rate increase demand be withdrawn. In respect to the other two issues the report made certain recommendations which were about midway

between the company and the union position.

After the recommendations were presented to the President there followed a period of negotiation. Ultimately the parties were unable to agree and a steel strike followed.

MR. BORIN: So that we get a picture of the fact-finding board in operation on another front, I should like to ask Wirtz what happened in the coal dispute.

Coal Fact-Finding Board

MR. WIRTZ: The board in the coal case was set up under the Taft-Hartley Act. It is a very different kind of animal from the one that Daugherty has described. It is not really a fact-finding board at all. Technically, it is called a board of inquiry. The board meets for only four or five days. There have been eight of these boards during the last two or three years. We met in the coal case for four days, heard the parties for a couple of days and then wrote our report. That is all there was to it. We had no authority to make any recommendations. We had authority only to find the facts in the case and to report those to the President. There was no mediation, no arbitration, no recommendation.

I don't think most people realize, Borin, that there was no point in this recent coal dispute at which any recommendation was made to either of the parties or to both of them by any government representative. Under the statute it is outside of the authority of the board of inquiry to make any recommendations.

MR. BORIN: Then the chief distinction between the fact-finding boards' ac-

tions in the coal and steel strikes was that in one we had a recommendation and in the other we did not. Is that correct?

MR. WIRTZ: That is correct.

Differences

MR. BORIN: Are there any other differences you would like to point out?

MR. WIRTZ: There is a lawyer's difference. The law provides for the setting up of a Taft-Hartley board of inquiry. The kind of fact-finding board of which Daugherty was the chairman in the steel case can be set up only on the recommendation of the President and with the approval of both parties. There is no statutory force behind it.

MR. BORIN: We have been talking about the way in which the fact-finding board works. From your experience, Daugherty, can you give us an evaluation of the success of your board in solving this steel strike?

MR. DAUGHERTY: It is a difficult question to answer. In the sense of doing the job that we were set up for, namely, the prevention of work stoppage, the board was not successful. On the other hand, in the sense of making recommendations which ultimately were the basis for a settlement after the strike, I should say the board was successful.

MR. BORIN: I am going to ask a rather embarrassing question. You need not answer. It was said during the steel strike that the fact-finding board was set up to pay Murray a political debt. Is that true?

MR. DAUGHERTY: I don't know why the board was set up. I wouldn't presume to answer whether the board was set up to repay a political debt or not. But I want to make this clear. Once the board was in operation there was no hint or suggestion from any source in Washington as to what our procedure or recommendations should be.

MR. CAPLES: As a party to the steel fact-finding proceeding I want to say this from industry's standpoint. We

believe that within the views of the men who sat on that board, they handed down a perfectly honest opinion, regardless of what their politics might or might not have been.

MR. BORIN: Caples, you have heard Daugherty and Wirtz discussing the fact-finding board. Do you think it is a good way of approaching disputes between labor and industry?

MR. CAPLES: No, I do not, and for this reason: If fact finding is to be successful, if it is to stop a labor dispute, the fact finders must take something away from the employer, little enough so that he cannot afford a strike. It must give the unions enough so that they can't afford to pull their members out on strike.

MR. BORIN: You believe it is always a compromise procedure?

MR. CAPLES: No, I don't think so. It means that the union must get something and that precludes the very real possibility that an employer can be entirely right in saying "no" to every demand of a union.

MR. WIRTZ: Is that pattern any different from the pattern which developed in private collective bargaining during the past ten or fifteen years? Is there some basis for your suggestion that there is more likely to be a compromise in connection with fact finding than there is in connection with private collective bargaining?

Compromise

MR. CAPLES: Yes, I think so. In fact finding, there is always a compromise. That is not necessarily true in collective bargaining. For instance, take the Northern Textile Industry which has recently settled or extended agreements without increasing the wage rates. There was a solution without a change in the conditions of the employer and the employee.

MR. WIRTZ: Am I wrong in saying that that settlement came as a result of private arbitration?

MR. CAPLES: No, you are not. That did

come in some instances, maybe in all, as a result of private arbitration but not as a result of fact finding.

MR. WIRTZ: But it was a case in which a third party, an entire stranger to the dispute and only a public representative, made a decision which in no way included an element of compromise.

MR. CAPLES: Yes, to be technical, that is correct.

MR. DAUGHERTY: You wouldn't suggest that there is anything inherently wrong in compromise, would you? I feel rather strongly that compromise is an essential part of democracy. When one side has its own way you get something that smacks of authoritarianism.

'Strangers'

MR. CAPLES: I think we live by compromise; otherwise, we would live in eternal conflict. But who is the party to make the compromise? In a fact finding situation we bring strangers in to try to settle a dispute which the parties themselves cannot settle. The parties are more familiar with the job conditions, the shop conditions, every condition, than any stranger can be. I think we tried to point that out in the steel case. As honorable as the board was, they were strangers to our people and to our plants. They have to be. John Lewis pointed that out when Mr. Truman offered him a fact-finding board of the steel type. He would not let his members be controlled by strangers. I am more or less of the same mind. The people who know the situation best should make the compromise if compromise can be made.

MR. BORIN: Don't you think that the fact-finding board can act as a representative of public interest. In most of these disputes we really don't have a representative of the public. Can the fact-finding board fill that role?

MR. CAPLES: I never understand what the public is. We all think we are part

of the public. And we undoubtedly are. I don't think the public is any one segment of the population. It is all of the population. Now, who represents the public? The unions claim they are the public. We in management claim we are the public. Then there is some third vague person who is the public. I don't think it is a question of bringing the public in. I don't think you can do it.

MR. WIRTZ: I don't think it is a matter of a vague third person. I think it is a matter of a clear and distinct interest—a consumer or a purchaser interest, if you will—which is very different from the producer interest which both the union and management in some of these cases represent.

MR. CAPLES: Yes, but don't the consumers discipline us for our mistakes in collective bargaining just as they do for making bad products or setting the price too high? The consuming public, if we are struck long enough, will find other suppliers; or if they don't like our labor policies they will buy products of other manufacturers. The public can discipline us without fact finding.

Public Opinion

MR. DAUGHERTY: Suppose I make an attempt arbitrarily to define the public as being everybody who is not immediately involved in the strike. In a situation where a strike does threaten, where sides have taken rather diametrically opposed views, isn't it true that each side recognizes the force of public opinion and tries to influence it? It is a vague thing and hard to define, but nevertheless very real. Each side has newspaper advertisements, issues statements, and holds press conferences. The public, the man on the street, does not have a very good way of discovering where the truth lies in the probably exaggerated claims of the participants. The parties in the dispute, in trying to be emphatic, may not tell the whole story as even they see it. The fact-finding board, it seems to me, comes in and acts as the agent, as Judge Rosenman

said, "the eyes and ears of the public." It tries to whittle out the truth of the situation in an unbiased way. And, for the people it is representing, it tries to get the merits of the issue as the members of the board see it.

MR. WIRTZ: I should be among the first to suggest that a board of inquiry in the coal case did not perform the function which you, Daugherty, outlined. I would like to make it as clear as I possibly can, that there are two very distinct kinds of fact finding. I have a substantial feeling of support for the kind of fact-finding board which you had in the steel case and which did the thing which Daugherty just outlined. However, I find myself agreeing with Caples on this. If by fact finding we mean only the sort of futile function—the function we performed in the coal case—to stay out would be as good as to get in.

Fact Finding Futile?

MR. DAUGHERTY: That underlines a point I would like to make. If a fact-finding board does not have the power to make recommendations and give the public the benefit of its presumed expertness and knowledge in the field, I think that it performs a rather futile function.

MR. CAPLES: The minute you substitute the judgment of fact finders for the judgment of management, you are accepting a new theory of how we should run the economy. Managers are appointed to preserve a business and run it to the best of their judgment. They are put in because they are thought to have good judgment. If fact finders who make decisions, are substituted without any responsibility for carrying the decisions out, you are saying in effect, "We will take the function of management and throw it aside and substitute fact finders because it is in the public's interest."

MR. WIRTZ: That would be the only principle on which we could operate in every case, except those one, two or three a year in which, for some reason or other, the judgment of the man-

agers and unions has resulted in their reaching an impasse that doesn't give us any out.

MR. BORIN: You are concerned about the basic industries?

MR. WIRTZ: I think it is a terrible thing for strangers to decide disputes. We are talking about cases of desperation. Two or three times a year we have to take desperate measures.

For Basic Industries

MR. DAUGHERTY: I agree 100 per cent with that position. I do not wish to see fact-finding boards set up in any but the basic industries and in emergency situations.

MR. BORIN: You would not use the fact-finding board in small industries?

MR. DAUGHERTY: That is right.

MR. CAPLES: The minute that both Daugherty and Wirtz say they are for fact finding they have to assume that fact finding admits a failure of collective bargaining, as Wirtz said, when union and management cannot agree. In other words, when collective bargaining has failed we have fact finding. Now, I don't know that we are going to cure anything with fact finding. Is there a basic evil?

MR. WIRTZ: I don't think we are curing anything. All we can possibly expect from any of these things is that through them we will work out something that will get over a hump that comes up once in a while. They don't have long-range constructive value. They are emergency measures.

MR. BORIN: Do you think they should be part of our labor laws?

MR. WIRTZ: I expect if this thing is going to be worked out successfully there will have to be some statutory provision for it. That introduces a variety of possibilities. I don't believe that we can avoid some kind of statutory coverage of the problem.

MR. BORIN: I think I should put Daugherty on the spot for just a moment. If you had the power to con-

struct labor legislation for these problems, what kind of laws would you write, Daugherty?

MR. DAUGHERTY: Well, if I may have a moment to develop my position I would be glad to do so. It seems to me that the one extreme you have is a "hands off completely" attitude by government such as Mr. Caples wishes to have. This approach has very definite advantages. The main one is that it places squarely on the shoulders of the parties, where it belongs, the necessity for coming to an agreement. It places on their shoulders the responsibility for practicing this democratic principle of compromise. As a matter of fact, the threats of strike and lockout are forces which help to bring about the compromise, because the parties would rather come to an agreement than to risk the losses involved in a work stoppage. But in basic industries, like coal, public utilities, railroads, and perhaps steel, there is the very definite cost of having the national health and welfare, either immediately threatened or subject to a creeping economic paralysis. To me that is a very serious price to pay for the freedom of collective bargaining that we all wish to see.

Compulsory Arbitration

At the other end of the scale there is the other extreme. There is compulsory arbitration. Nobody is advocating that today, but it has been advocated frequently. As you know, under compulsory arbitration, the submission of the dispute and the recommendations are made compulsory. Waving the question of whether or not you can enforce the awards, there is a very definite—and that is a moot point, I might say—advantage of assuring a steady flow of commodities and services from the producer to the consumer. But that is also accompanied by a very serious cost. It means, if my observation is correct in New Zealand and other countries, a withering away of collective bargaining. Why? Because either party, or both parties, think they will get a

better deal in the arbitration court set up by the government. In trying to be the government they transfer their energies and their activities from the economic field and from bargaining to the arbitration court where they try to exercise control. I think that is a very serious thing. I think that although countries such as Australia and New Zealand don't yield in the practice of political democracy, they lose the practice of democracy where it means the most—in bargaining between management and labor. To me that is too big a cost to pay for having a free and unimpeded flow of commodities to the consumer.

There is even another cost. Inevitably those countries or those governments get into price fixing and make even more economic decisions. They take economic decisions away from private enterprise. So it seems to me that the best thing is to try to find some middle-ground method under which most of the advantages of the other extremes are preserved and most of their costs or disadvantages removed.

So I would recommend two things: I would recommend that the prestige of government be put behind a move to have written into private collective bargaining agreement provisions for private voluntary arbitration, which is a very different thing from compulsory arbitration. Under voluntary arbitration the parties themselves agree to submit the unsettled items in new agreements to private arbitration.

MR. BORIN: I assume from what you said previously, Caples, that you would put fact finders, like Wirtz and Daugherty, on the list of the unemployed? [Laughter]

'Cure Cause'

MR. CAPLES: Heaven forbid that such able men should be on the list of the unemployed. I would keep them employed but not as fact finders. I think, as Wirtz said earlier, that fact-finding boards are things of expediency. Expedients are never any good. What

you want to do is cure a basic cause. I think that instead of having fact-finding boards we should look at causes of labor disputes, in other words, national labor disputes, the things we are talking about now—coal, steel and possibly other industries. How do these things come about? They come about because one union and one man has the power to keep certain raw materials from industrial use and eventual public consumption.

I think if a restraint were placed upon the leaders of organized labor, the same restraint that is placed upon business, they could not combine in combinations which are in restraint of trade. In other words, if they could only strike a small portion of any business at any time we would have no need for fact finding. Let me try to point that out in an example. There is no coal mine or coal company in the United States which, by itself, whether it works or does not work, affects the national economy in any way. But when, through one union, you stop all coal production at once, it becomes a great problem to the economy and the nation and we start looking for solutions.

MR. BORIN: You still wouldn't use the fact-finding board?

MR. CAPLES: No, I say the solution is a curb of power, not fact finding.

MR. BORIN: How would you go about curbing the power of labor unions? Would you like to see labor laws and regulations?

Restrictions Not Laws

MR. CAPLES: No, I don't think so. I am not very much of a believer that you can have good labor relations by law. I believe that the way to do it is through a restriction of power. In other words, if unions were subject to laws similar to the anti-trust laws, laws that regulate the power of business, a lot of our difficulties right there would be solved. You mentioned earlier the Chrysler strike. Chrysler is a big company. There are a lot of people out of work. There are a lot

of cars not being made but the economy isn't affected.

MR. BORIN: Wirtz, do you agree with Caples?

MR. WIRTZ: If I understand Caples' position, it is that he doesn't want labor relations governed by law except the right kind of law, which would be a law that would break up large-scale collective bargaining. Frankly, if I had the world to make over I would make it in awfully small pieces. There would be small unions and small corporations too. I am afraid that we are past that point.

Nine Man Board

I should like to toss out this suggestion. It follows rather closely along the lines that Daugherty has drawn. I should start with the proposition that all, except two or three collective bargaining disputes which are likely to arise in the country in any given year, be worked out without the necessity of resorting to fact finding or any other kind of law. Last year it was the steel case and the coal case; next year it may be these two industries or others. I should like to see a situation in which the President would have the authority by statute to convene an emergency board when one of these two or three major disputes threatened. I am thinking in terms of a nine-man board: the heads of the Chamber of Commerce and the National Association of Manufacturers, and perhaps the Secretary of Commerce; on the labor side, the heads of the CIO and the AFL, and perhaps the Secretary of Labor; and then three others. I would like to see nine men of this stature called in by the President and told this: "We believe in collective bargaining. You believe in collective bargaining. But it has broken down in this particular case. You men, not your deputies but you men, get into this situation and see if you can't work it out through mediation. If you can't, then report to me and to the country what you think ought to be done about it. Maybe it is compulsory arbitration, maybe it is

an injunction, maybe it is seizure; maybe it is fact finding with recommendations.

I am confident that those nine men could, with the power at their command, with the understanding which they have, work out these two or three cases which we have each year.

MR. BORIN: How does your solution differ from Wirtz', Daugherty?

MR. DAUGHERTY: I think there is a great deal of merit in what Mr. Wirtz has suggested, because one difficulty about fact finding is that if the parties know that it is going to be there, they are rather likely to resort to it, the same as compulsory arbitration, whereas no one, as I understand your proposition, would know what these men are going to recommend.

MR. WIRTZ: May I add one detail. There would be an Executive order requiring the preservation of the status quo during this period, not an injunction but an Executive order that the men stay at work and the companies keep on producing.

MR. BORIN: You are afraid of laws like this, Caples?

MR. CAPLES: Yes I am, because the implication of what both Daugherty and Wirtz have said is that govern-

ment will be in every major labor dispute. I say that if the power of business is curbed by anti-trust laws, and it is, and the power of labor is curbed by a similar law, which it is not, then you have no need to bring government in, nor do you need fact finders if you break the thing down into little units, and with that I agree with Wirtz. I think bigness is bad.

MR. DAUGHERTY: I should like to make it clear that my recommendation in behalf of fact finding, with power to make recommendations under a statute, or Mr. Wirtz' proposal, both involve no ultimate acceptance of the recommendation by the party and thereby ultimately, as we showed in the steel strike, preserve freedom of action which is a lot different from compulsory arbitration.

MR. BORIN: In spite of our analysis, the labor dispute is still with us. We seem to agree on that point. We seem to disagree, however, on how to handle it. We've heard the case for the fact-finding board. We've heard a sharp criticism of this method of approaching the industrial dispute. We've heard the case for little or no government action. May our discussion be a small part of a continuing search for better methods of keeping peace on the labor-management front.

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Reference Department, Deering
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DAUGHERTY, CARROLL R. *Labor Problems in American Industry*. Boston, Houghton, 1948.

A recent edition of a well-known work. Contains chapters on "The Law and Industrial Democracy; The Administration of Labor Laws" etc.

ISERMAN, T. R. *Some Anomalies in the Steel Board's Report*. Detroit, Automobile Manufacturers Association, 1949.

"Some fallacies of fact finding."

STEWART, B. M., and COUPER, W. J., *Fact Finding in Industrial Disputes*. (Industrial Relations Monograph No. 11) New York, Industrial Relations Counselors, 1946.

Contents that experience does not support the theory that if the facts are known the terms of a just settlement are obvious.

U. S. House. 79th Cong., 1st. Sess. Hearings before the Committee on Labor on H. R. 4908; a Bill to Provide for the Appointment of Fact-Finding Boards to Investigate Labor Disputes Seriously Affecting the National Public Interest. Dec. 10-14, 1945. Washington, D. C., Government Printing Office, 1946.

U. S. President. Report to the President of the United States in the Labor Dispute in the Basic Steel Industry by the Steel Industry Board Appointed by the President, July 15, 1949. Submitted September 10, 1949. Washington, D. C., Government Printing Office, 1949.

Findings by Samuel I. Rosenman, David L. Cole, and Carroll R. Daugherty.

Academy of Political Science. Proceedings. 22:64-73, My., '46. "Fact Finding in Labor Disputes." J. T. DUNLOP.

Scholarly presentation of the history of fact finding, how it operates, etc. Concludes that while it may be a useful tool in certain situations, "it constitutes a serious threat to the development of mature collective bargaining."

Barron's 26:3+, Ja. 7, '46. "Fact Finding, Newest Fixture on the American Labor Scene." J. HIRSCH.

Tells why, although fact finding is neither new nor startling, its application is difficult. Gives the background of fact-finding boards in America and Europe, the arguments for and against it, and the various problems which face the fact finder.

Commercial and Financial Chronicle 162:3136+, D. 27, '45. "Truman's Fact Finding Proposal No Remedy." W. I. KING.

An early denouncement of the fact-finding procedure.

Commercial and Financial Chronicle 163:50+, Ja. 3, '46. "What They Say about Fact Finding."

Includes statements by the Fact-Finding Board, General Motors, and the U. A. W., concerning the work of the Board in the General Motors-U. A. W. wage dispute of '45 and '46.

Editorial Research Reports pp. 617-32, S., 21, '49. "Fact-Finding Boards in Labor Disputes." W. H. CHARTENER.

Contents: "Truman Reliance on Fact-Finding Method; Experiences in National Emergency Disputes, Fact-Finding Boards and National Labor Policy."

Factory Management 104:134-6, O., '46. "Fact Finding No Cure-all."

An analysis and appraisal of fact finding as a tool for "super-conciliation." Recounts the experience of the Labor Department with fact-finding boards after the General Motors strike of '45 and '46.

Factory Management 104:118-9, Mr., '46. "How Management Views Fact Finding."

The answers to six questions framed to reflect basic views of industry on the issue, and asked of a typical cross-section of management leaders.

Lawyer's Guild Review 7:19-22, Ja., '47. "Role of Government in the Prevention and Settlement of Labor Disputes by Conciliation, Mediation and Arbitration." N. P. FEINSINGER.

Describes the author's own experience as Board Chairman in two fact-finding cases, the Pacific Gas and Electric, and Milwaukee Gas Light cases.

Monthly Labor Review 69:507-10, N., '49. "Report of the President's Steel Industry Board."

A summary of the board's findings, including observations on the use of fact-finding boards. Pointing out that government intervention in the public interest is "imperative and has been employed for decades," notes the advantages of the fact-finding procedure.

Monthly Labor Review 62:537-49, Ap., '46. "Wage Policy and the Role of Fact-Finding Boards." H. M. DOUTY.

Between November of 1945 and January of 1946 six boards were appointed to handle a group of important labor disputes in the petroleum refining, steel, meat-packing, etc., industries. Describes the ways in which they functioned and examines the significance of their recommendations.

Monthly Labor Review 68:532-4, My., '49. "Work of Emergency Boards of Inquiry in 1948." L. R. NOLAN.

Boards of inquiry, established by the President under the Taft-Hartley Act of 1947, investigated seven disputes in 1948. Traces the operations in each dispute from the date that the President named the members of the board through the final settlement.

Nation's Business 34:66+, F., '46. "Enough Facts to Choke a Horse; Fact-Finding." O. HOYEM.

Maintains that the need for facts about business and labor should not be made an argument for greater government control.

National City Bank of New York pp. 2-5, Ja., '46. "Fact Finding and Ability to Pay."

Points out that the basic question is not whether fact finding as such is desirable but rather whether or not the facts can be determined quickly, correctly, and impartially, and safeguards provided against possible abuses of the fact-finding process.

United States News 27:34-7, S. 30, '49. "Value of Fact-Finding Boards, An Interview with Samuel I. Rosenman."

Judge Rosenman, a member of the steel fact-finding board discusses the fact finding process and how it can be applied generally in industrial disputes. Stresses that politics must be kept out of the selection of a board.



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